

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MICHAEL J. SCHUMER,

Respondent,

v.

JERRY LEE, DIRECTOR, DEPARTMENT OF PUBLIC SAFETY,

Appellant.

DOCKET NUMBER WD75917

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 30, 2013

APPEAL FROM

The Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge

JUDGES

Division Three: Hardwick, P.J., and Pfeiffer and Martin, JJ.

CONCURRING.

ATTORNEYS

David F. Barrett
Jefferson City, MO

Attorney for Respondent,

Chris Koster, Attorney General
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Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MICHAEL J. SCHUMER,

Respondent,

v.

**JERRY LEE, DIRECTOR,
DEPARTMENT OF PUBLIC SAFETY,**

Appellant.

**OPINION FILED:
July 30, 2013**

WD75917

Cole County

Before Division Three Judges: Lisa White Hardwick, Presiding Judge, and Mark D. Pfeiffer and Cynthia L. Martin, Judges

Jerry Lee, the Director of the Department of Public Safety (“Director”), appeals the judgment of the Circuit Court of Cole County, Missouri (“trial court”), which reversed the Director’s decision revoking the peace officer license of Respondent Michael Schumer (“Schumer”). Although he is the respondent, Schumer challenges the administrative decision, and so on appeal, Schumer argues: that the disciplinary statute, § 590.080, and the process employed by the Director in applying the statute, are unconstitutional; that the criminal statute of limitations for assault should have barred the discipline of his license; that the Director erred in finding that Schumer had committed assault because there was no evidence that the alleged victim was in apprehension of immediate physical injury; that the Director’s expert testimony did not establish that Schumer had behaved recklessly; that the Director’s decision was not supported by sufficient findings of fact to justify the disciplinary action taken; and that the decision was improperly issued by the Director’s “Deputy.”

REVERSED.

Division Three holds:

The statute governing discipline of peace officer licenses does not violate the licensees’ constitutional rights. Even though the disciplinary process may involve an administrative determination that a licensee has committed a crime while not affording the licensee the

protections the Constitution guarantees criminal defendants, the differences in the two procedural systems are justified by their respective purposes. Similarly, because the purpose and effects of the civil license disciplinary proceedings are different from those of criminal prosecutions, the criminal statutes of limitations do not operate to bar the administrative disciplinary proceedings.

Sufficient evidence existed in the record to support the Director's finding that the alleged assault victim, a driver involved in a traffic stop, was in apprehension of immediate physical injury even though he did not testify and his administrative complaint against Schumer was not admitted into evidence because the testimony of another police officer who was present at the scene substantially supported this finding. Also, the testimony of the Director's expert substantially supported the finding that Schumer acted in reckless disregard of the safety of the driver.

Once the Administrative Hearing Commission has determined that cause exists to discipline the license of a peace officer, the Director has broad discretion in determining the particular form of discipline that should be imposed. In this case, Schumer was allowed a "Director's hearing" to present additional evidence and to argue his case, yet the Director, by his designee, decided that permanent revocation of Schumer's license was appropriate. This determination was not arbitrary or capricious and was not an abuse of discretion. Also, the designation of the Director's authority to Deputy Director Spillars to make the final decision in Schumer's case was not erroneous. The disciplinary statute expressly grants the Director the authority to act through a designee, and there is no requirement that the designation be in writing or that it appear expressly in the record.

Opinion by: Mark D. Pfeiffer, Judge

July 30, 2013

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